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SUBJECT: Progress on Finalizing Agreement on the New Quito Airport

CLASSIFIED BY: Heather Hodges, Ambassador, State; REASON: 1.4(B), (D)

¶1. (SBU) Summary: Although numerous hurdles remain, negotiations between Quiport, the private consortium building the new Quito International Airport, the project lenders (including OPIC and Ex-Im), and the Mayor of Quito led to a release of funds on December 7 for continued construction of the airport, and created a framework for finalizing a "Strategic Alliance Agreement" to govern relations between the Municipality and Quiport. The Ambassador met with Quito Mayor Augusto Barrera December 17 to discuss progress and to explore where the Embassy could offer further assistance. As a defensive measure, the lenders intend to file for international arbitration on/about December 21, although they will also file an immediate stay to their case. There is a January 29 deadline to show significant progress across a range of issues. End Summary.

First construction funds released since Constitutional Court's July 23 ruling

¶2. (SBU) Representatives of the four lenders for the new Quito airport project, the Overseas Private Investment Corporation (OPIC), the U.S. Export-Import Bank (Ex-Im), the Inter-American Development Bank (IDB), and Export Development Canada (EDC), visited Quito for meetings with the Municipality and Mayor Barrera November 19-20 and December 8-9. Representatives from Quiport, the private consortium of four companies (Aecon and Airport Development Corporation, both of Canada, Andrade Gutierrez of Brazil, and Houston Airport Systems Development Corporation of the U.S.) which has the concession for the new Quito airport, also attended. During these meetings the lenders and the Municipality reached agreement on a series of difficult issues that had plagued the airport negotiations since the July 23 Ecuadorian Constitutional Court ruling that airport fees were government property. On November 20 the sides tentatively agreed that the future agreement between the Municipality and Quiport, called a "Strategic Alliance Agreement" (SAA) would include: 1) international arbitration via the World Bank's Convention on the Settlement of Investment Disputes (ICSID), despite Ecuador's announcement June 6 that it was leaving the convention; 2) that the Investor Protection Agreement would remain in force (ref A); 3) a clear calculation for how money collected at the airport would be disbursed; and, 4) that the municipality would receive a larger share of the profits from airport operations. Following the November meetings the lenders agreed to disburse, on December 7, approximately \$21 million in new construction funding. This disbursement ensured airport construction would continue and was a major goal of Mayor Barrera (ref B).

¶3. (SBU) The lenders returned for additional meetings with the

Municipality December 8 and 9 to discuss and begin drafting a brief to the Constitutional Court requesting the Court bless the new SAA reached between the Mayor and the lenders. A difficult issue remains the flow of airport funds. Although a trust agreement, controlled by the Municipality, has been agreed for the old airport, plans are for the funds at the new airport to flow directly to Quiport. While the court brief will present an argument as to why this should be legal, the Court will need to find an accommodation with its previous ruling.

Mayor meets with American and Canadian Ambassadors to discuss challenges

14. (SBU) On December 17, Mayor Barrera met separately with the Ambassador and Canadian Ambassador Shisko to discuss progress on negotiations and the Mayor's difficulties with the proposed SAA. Barrera was confident that the majority of outstanding issues discussed in his previous meeting with the Ambassador (ref B) were close to being resolved: outstanding permits and certifications, such as necessary environmental permits, would soon be issued; construction was ongoing and 70% complete; and a new financial framework, increasing the municipal share of airport profits, had reached the "pre-agreement" stage. Barrera stressed, however, that there were numerous outstanding issues in the planned SAA beyond his control. Issues related to the State Prosecutor, the State Comptroller General, and the National Assembly, for example, required action by independent central government actors. He requested the Ambassadors intercede with the lenders to encourage them to adopt a more flexible stance in regard to their demands, and also for the first time agreed that perhaps it would be useful

for the Ambassadors to speak directly with members of the central government.

Comment

15. (SBU) The release of funds for construction, and the tentative agreements between the Mayor and the lenders, provided additional breathing room for the parties to negotiate. Nonetheless, the lenders have indicated they plan to file for ICSID arbitration on/about December 21. This filing is essentially a placeholder, designed to preserve their right to ICSID arbitration, and the lenders plan to immediately file a stay of their case as well. Nevertheless, given Ecuadoran President Correa's visceral dislike of ICSID, it will be interesting to see if the lenders' action provokes a central government response. The lenders have also set a January 29 deadline for the Constitutional Court to make a decision, and for the GoE to satisfy the terms of the SAA. Realistically, this deadline, like others encountered so far, will likely prove flexible so long as the sides continue to make genuine progress.

HODGES